

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEAL BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6220 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

DALE E. JONES
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-184

FORMERLY BENEFIT DECISION No. 6220
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RALPH N. BRODIE COMPANY
(Employer-Appellant)

Account No.

STATEMENT OF FACTS

The above-named employer appealed from the decision of a referee which held that the claimant was not subject to disqualification under section 1256 of the Unemployment Insurance Code and that the employer's account was chargeable under section 1032 of the code with respect to any benefits paid to the claimant.

The claimant was last employed as a machinist by the appellant-employer from July 29, 1954, to August 16, 1954, when he was terminated by the employer for reasons hereinafter set forth.

The claimant established an additional claim for unemployment insurance benefits in the Oakland office of the Department of Employment, effective August 15, 1954. The Department thereafter issued a determination and a ruling which held that the claimant had been discharged for reasons not constituting misconduct under sections 1256 and 1030 of the Unemployment Insurance Code.

033-04184

The claimant was hired by the employer as a production worker on July 29, 1954. In his application for employment, the claimant indicated that he had operated drill presses, lathes, punch presses, reamers, grinders, threaders, burrers, and welding equipment. The claimant was first assigned by the employer to work on a drill press. His work on the machine was deemed unsatisfactory by his foreman and after two days he was moved to the lathe department where he was assigned to work involving the operation of a lathe. After working at this assignment for approximately two hours, he loaded a part incorrectly and wrecked a fixture which required several hours to rebuild. He was thereafter transferred to several successive jobs by the employer, but failed to meet the employer's standards and on August 16, 1954, was discharged because of his "incapacity" to perform his work in accordance with the standards required by the employer. The claimant testified that he correctly set forth his prior work experience in the application which he filed with the employer and that he put forth his best efforts to perform the work which he was assigned.

REASONS FOR DECISION

In its appeal of this matter, the employer contends that it was not afforded a fair hearing by the referee before whom the matter was originally heard.

After a careful review of the transcript of hearing before the referee, we find that the employer was afforded an opportunity to present all evidence which was material to the case and that the employer was afforded a fair hearing before the referee.

In cases involving the application of former section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code), we have repeatedly applied the definition of misconduct laid down by the Supreme Court of Wisconsin in Boynton Cab Company v. Neubeck, 296 N.W. 636, wherein the Court said in part:

" . . . The term 'misconduct' as used in (the disqualification provision) is limited to conduct evincing such wilful or wanton disregard of an employer's interest as is found in

deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances or good faith errors in judgement or discretion are not to be deemed 'misconduct' within the meaning of the statute."

A review of the evidence in this matter does not indicate that the claimant misrepresented his prior experience when making application for work with the employer herein nor does it disclose in our opinion more than inefficiency or unsatisfactory performance on the part of the claimant which culminated in his discharge on August 16, 1954. The record does not establish that the claimant wilfully or intentionally disregarded the employer's interests, or that the occurrences forming the basis for the discharge were deliberate violations of standards of good behavior which the employer had a right to expect of his employee. Accordingly, we are of the opinion that the discharge was not for misconduct on the part of the claimant within the meaning of that term as used in sections 1256 and 1030 of the code and that the claimant is not subject to disqualification for benefits (Benefit Decisions Nos. 4648 and 4853).

DECISION

The decision of the Referee is affirmed. Benefits are payable provided the claimant is otherwise eligible. Any benefits paid to the claimant which are based upon wages earned from the employer prior to August 16, 1954,

are chargeable under section 1032 of the code to employer account number

Sacramento, California, January 14, 1955.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6220 is hereby designated as Precedent Decision No. P-B-184.

Sacramento, California, January 27, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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